BANKRUPTCY—PARTNERSHIP—ADMINISTERING ESTATE OF INSOLVENT PARTNER ENGAGED IN EXEMPT OCCUPATION.—Proceedings in involuntary bankruptcy were brought against the firm of A & B, the petition also praying an adjudication against the partners individually. It was shown that both partners, as well as the partnership, were insolvent, that an act of bankruptcy had been committed, and that A, the senior partner, was engaged chiefly in farming. *Held,* that the firm of A & B and partner, B, were properly adjudged bankrupts, and that while partner A was exempt from such adjudication in an involuntary proceeding because of his being engaged in an exempt occupation, his estate should nevertheless be administered by the trustee for the payment of the partnership debts. *In re R. F. Duke & Son,* (D. C. Ga. 1912) 199 Fed. 199.

The question whether or not an adjudication against a partnership and not against the individual members thereof will draw their individual estates into administration as partnership funds, is one on which the courts are not yet agreed. The court in the principal case regarded *Francis* v. *McNeal,* 186 Fed. 481, 108 C. C. A. 45, as controlling. In that case the court said, "A partnership is a legal entity which may be adjudged a bankrupt irrespective of an adjudication against any of its members; but in an involuntary proceeding, where the act of bankruptcy charged is one that involves insolvency of the partnership, there can be no adjudication against it unless it and all of its members are insolvent, and in such a case, though the adjudication be against the partnership only, or against the partnership and some, but not all, of its members, the estates of all its members are drawn into the proceedings for administration." A contrary view is taken in the case of *In re Bertenshaw,* 157 Fed. 363, 85 C. C. A. 61, in which the court held that an adjudication against a partnership, which does not also include the partners individually, will not draw over their estates for the liquidation of the partnership debts. For a discussion of the questions arising in these cases, see 10 MICH. L. REV. 215. The principal case, adopting the view taken in *Francis* v. *McNeal,* goes a step further, in that it makes the rule apply to the estate of a partner engaged chiefly in an exempt occupation, and thus practically subjects to involuntary bankruptcy the estate of a person who is engaged in an occupation which is declared by § 4b of the Bankruptcy act to exempt its members from involuntary proceedings.

BANKRUPTCY—WHO EXEMPT—OCCUPATION AT TIME OF COMMITTING ACT OF BANKRUPTCY.—Proceedings in involuntary bankruptcy were begun against Folkstad, who at the time of petition, and at the time of committing the alleged act of bankruptcy, was engaged solely in the tillage of the soil. The debts on which the creditors proceeded, however, had been contracted by him while he was engaged in mercantile business. *Held,* that the occupation at the time of committing the alleged act of bankruptcy governs, and that Folkstad, being at that time in an occupation exempt from involuntary bankruptcy, cannot be adjudicated a bankrupt. *In re Folkstad* (D. C. Mont. 1912) 199 Fed. 363.

The court said, "An act is an act of bankruptcy for the reason that he

who commits it can because thereof be adjudicated an involuntary bankrupt. It is an 'act of Bankruptcy' when the act is committed, or not at all. If the act is committed by one who then is not of the class that the law says may be adjudged an involuntary bankrupt, it is not an act of bankruptcy, and furnishes no foundation for involuntary proceedings." This construction is directly opposed to *In re Burgin,* 173 Fed. 726, where, in a similar situation the court held that the status of a person, against whom proceedings in involuntary bankruptcy had been instituted, should be determined, as to his occupation, as of the date when the debt was contracted. The same conclusion was reached, after an exhaustive examination of the authorities, in *Tiffany* v. *La Plume Condensed Milk Co.,* 141 Fed. 444. *In re Matson,* 123 Fed. 743, adopted a yet different view. In that case the court said that the occupation of the respondent is to be determined by his bona fide occupation at the time of the bringing of proceedings against him. This opinion was founded on the general rule as to jurisdiction which prevails in the federal courts, and which was stated by Chief Justice MARSHALL in *Mollon* v. *Torrance,* 9 Wheat. 537, as depending "on the state of things at the time of the action brought, and that after vesting it cannot be ousted by subsequent events." *In re Luckhart,* 101 Fed. 807; *In re Flickinger,* 145 Fed. 162, 76 C. C. A. 132; and *In re Leland,* 185 Fed. 830, are in accord with the principal case.

BILLS AND NOTES—EFFECT OF CERTIFICATION OF CHECK.—The agent of a lender of money to be used to take up an existing mortgage requested the mortgagee's agent to state whether he wanted the money in cash or by certified check, to which the latter replied that a certified check would do, whereupon such a check was tendered. The agent deposited the check within ten minutes after it was received; but the bank on which it was drawn closed the following day, and the check was dishonored when presented for payment. *Held,* that the agent's request for certification of the check did not constitute an election to take the certified check in payment of the debt, and that the delivery thereof did not constitute payment. *Davenport* v. *Palmer* (N. Y. 1912) 137 N. Y. Supp. 796.

The certification of a check by a bank is equivalent to an acceptance, and implies that the check is drawn upon sufficient funds in the hands of the drawee; that they have been set apart for its satisfaction, and that they shall be so applied whenever the check is presented for payment. *Merchants' Bank* v. *State Bank,* 10 Wall. 604. If the payee or holder, in his own behalf, or for his own benefit, gets it certified instead of getting it paid, then the drawer is discharged. *Minot* v. *Russ,* 156 Mass. 458; *Metropolitan Nat. Bank* v. *Jones,* 137 Ill. 634. The reason for the rule is, as stated in the principal case, that the holder "causes the funds to be withdrawn from the control of the maker, and leaves them with the bank for his own accommodation." Where the drawer procures certification of his own check before delivery, he is not discharged in case the check is dishonored. *Oyster & Fish Co.* v. *Bank,* 51 Oh. St. 106. The same rule applies when the payee, before delivery to him, requests the drawer to procure the check to be certified, *Randolph*